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Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Concluding observations on the fourth periodic report of the Republic of Korea*

1. The Committee on Economic, Social and Cultural Rights considered the fourth periodic report of the Republic of Korea on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/KOR/4) at its 54th and 55th meetings (E/C.12/2017/SR.54 and 55) held on 20 and 21 September 2017, and adopted the following concluding observations at its 70th meeting, held on 6 October 2017.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of the State party and the written replies to the list of issues (E/C.12/KOR/Q/4/Add.1). The Committee appreciates the constructive dialogue held with the State party's intersectoral delegation.

B. Positive aspects

3. The Committee welcomes the legislative, institutional and policy measures taken to promote economic, social and cultural rights in the State party, including:

(a) Amendment of the National Human Rights Commission of Korea Act in 2016 providing for a transparent and participatory selection process;

(b) Act on the punishment of the crime of child abuse of 2014;

(c) Refugee Act of 2013;

(d) Act on gender impact analysis and assessment of 2011;

(e) Amendment of 2010 of the higher education act, which placed an upper ceiling on tuition fee increases.

4. The Committee welcomes the ratification of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions in 2010.

C. Principal subjects of concern and recommendations

National action plan for human rights

5. While noting the statistical data on the activities implemented under the second national action plan for human rights, the Committee is concerned that the plan has not been sufficiently used to fully implement the concluding observations following the State

* Adopted by the Committee at its sixty-second session (18 September-6 October 2017).

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party's third periodic report (E/C.12/KOR/CO/3). It also regrets the absence of an institutional framework for ensuring the full participation of the National Human Rights Commission of Korea and civil society in the planning and monitoring of national action plans (art. 2 (1)).

6. **The Committee urges the State party to:**

(a) **Make public the comprehensive evaluation of the second national action plan for human rights as soon as possible;**

(b) **Fully incorporate the present recommendations in the third national action plan for human rights, with clear implementation timelines and indications of responsibility for the branches and tiers of Government;**

(c) **Put in place an institutional framework for the full participation of the National Human Rights Commission of Korea and civil society in the formulation, monitoring and assessment of national action plans for human rights.**

Application of the Covenant

7. Given the limited scope of the constitutional provisions on economic, social and cultural rights, the Committee remains concerned that the Covenant rights are not given full effect in the jurisprudence of the State party, including as a consequence of the judiciary's reluctance to review the conformity of domestic legislation with the Covenant rights (art. 2 (1)).

8. **The Committee recommends that the State party take measures to ensure that the Covenant is given full practical effect in accordance with article 6 of the Constitution, in particular through (a) institutionalized training of judges, lawyers and prosecutors on the provisions of the Covenant and the justiciability of economic, social and cultural rights; (b) awareness-raising of the Covenant rights among the public at large; and (c) full incorporation of economic, social and cultural rights in its Constitution in the context of the constitutional revision announced by the delegation. The Committee refers the State party to its general comment No. 9 (1998) on the domestic application of the Covenant.**

Access to remedies

9. The Committee is concerned that, in spite of the expansion of the availability of legal aid, access to judicial remedies for violations of economic, social and cultural rights is hampered by the high costs associated with legal proceedings, such as the court stamp fee (art. 2 (1)).

10. **The Committee recommends that the State party review the rules on fees for judicial proceedings, to ensure that they do not hamper the right to an effective remedy for victims of violations of economic, social and cultural rights.**

Maximum available resources

11. The Committee is concerned about the continuously very low level of public social spending, as a percentage of gross domestic product (GDP), in the State party, in spite of its increase in absolute terms over the long term. It is also concerned at the lack of effective accountability for the delivery of social services by public agencies and private entities and by the fact that the accessibility, affordability and quality of social services delivered by the latter are not regularly guaranteed (art. 2 (1)).

12. **The Committee urges the State party to:**

(a) **Accelerate the increase of its investment in social spending, including by pursuing a more redistributive fiscal policy, in order to improve the enjoyment of economic, social and cultural rights, especially for marginalized and disadvantaged groups, and address social inequalities;**

(b) **Raise the awareness of local authorities and public agencies of their duties under the Covenant;**

(c) **Strengthen monitoring and accountability mechanisms for the delivery of social services, by both public agencies and private entities.**

Corruption

13. The Committee regrets the lack of statistical data on judicial cases relating to corruption. It is also concerned at shortcomings in the anti-corruption legislation (art. 2 (1)).

14. **The Committee recommends that the State party widen the scope of the act on the protection of public interest whistle-blowers, fully enforce the improper solicitation and graft act, with its original provisions, and ensure that the anti-corruption institutional framework is effective. The Committee also recommends that the State party monitor the effectiveness of the anti-corruption machinery by collecting statistical data, including on judicial cases relating to corruption.**

National human rights institution

15. While appreciating the work undertaken by the National Human Rights Commission of Korea, the Committee remains concerned that its investigative mandate is limited to articles 10 to 22 of the Constitution and thus essentially excludes economic, social and cultural rights.

16. **The Committee urges the State party to amend the act on the National Human Rights Commission with a view to making the implementation of the Covenant rights subject to investigation and assessment of complaints by the Commission. The Committee draws the attention of the State party to its general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights.**

Business and human rights

17. The Committee is concerned about the absence of a legal obligation for companies domiciled in the State party or under its jurisdiction to exercise human rights due diligence. The Committee is also concerned at the documented cases of human rights violations resulting from the operations of Korean companies at home and abroad and that the State party's public financial institutions do not link the provision of loans and grants to companies and projects to human rights requirements.

18. **The Committee recommends that in the context of the formulation and implementation of the section on business and human rights of the third national action plan on human rights, the State party:**

(a) **Establish a legal obligation for companies domiciled in the State party and those entities that they control, including those in their supply chain (subcontractors, suppliers, franchisees, etc.), to exercise due diligence in order to identify, prevent and mitigate the risks of violations of the Covenant rights, to avoid such rights being abused and to account for the negative impacts caused or contributed to by their decisions and operations;**

(b) **Act upon allegations of violations of human rights resulting from activities of Korean companies, domestically and abroad, that are brought to its attention and ensure that victims can claim reparations through the State party's judicial and non-judicial mechanisms;**

(c) **Link public procurement and the provision of loans, grants and subsidies with the observance of economic, social and cultural rights domestically and abroad;**

(d) **Enhance the impact, transparency, inclusiveness and effectiveness of the national contact point, including through promotional activities and proactive mediation in accordance with human rights standards.**

19. **The Committee draws the attention of the State party to its general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.**

Official development assistance

20. The Committee reiterates its regret that the State party's official development assistance (0.14 per cent) falls far below the internationally agreed commitment of 0.7 per cent of gross national income (art. 2 (1)).

21. **The Committee recommends that the State party (a) accelerate the increase of the level of its official development assistance, with a view to achieving the international commitment of 0.7 per cent of its gross national income and (b) seek a better balance of the share of grants and loans in aid to least developed countries in accordance with the Committee's previous concluding observations.**

Non-discrimination legislation

22. The Committee is concerned at the delay in the adoption of comprehensive anti-discrimination legislation, especially in view of the fact that the State party's Constitution prohibits discrimination only on the grounds of sex, religion and social status. It is further concerned that the State party has not taken sufficiently proactive and effective steps to build consensus around the prohibited grounds of discrimination among the population (art. 2 (2)).

23. **The Committee reiterates the urgency of adopting comprehensive anti-discrimination legislation and recommends that the State party raises awareness among the population and legislators about the harmful effect of discrimination on the protection of human dignity and the equal enjoyment of human rights. The Committee refers the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

Discrimination on the grounds of sexual orientation and gender identity

24. The Committee is concerned at the criminalization of same-sex acts in the military criminal act. The Committee is also concerned that the persons involved in same-sex relationships are exposed to discrimination in the enjoyment of several Covenant rights. Moreover, it is concerned at reports of discriminatory attitudes and acts against lesbian, gay, bisexual, transgender and intersex persons in many fields of public life (art. 2 (2)).

25. **The Committee recommends that the State party take effective measures to eliminate de jure and de facto discrimination against lesbian, gay, bisexual, transgender and intersex persons. In particular, it recommends that the State party:**

(a) **Abrogate the provision of the military criminal act, which criminalizes same-sex acts;**

(b) **Revise legal and regulatory provisions that are discriminatory or have a discriminatory effect, such as those relating to social security, reproductive health and housing;**

(c) **Ensure that the comprehensive anti-discriminatory law to be adopted also prohibits discrimination on the grounds of sexual orientation and gender identity;**

(d) **Conduct awareness-raising campaigns to counter prejudices regarding lesbian, gay, bisexual, transgender and intersex persons.**

Non-nationals

26. The Committee is concerned that the rights contained in the State party's Constitution are accorded only to citizens and about the ruling by the Constitutional Court that non-citizens are not entitled to the full set of social rights. In particular, the Committee is concerned that non-citizens are excluded from the State party's social security system and public services, including those relating to birth registration and to the protection of victims of abuse (art. 2 (2)).

27. **The Committee recommends that the State party take the necessary measures to ensure that the Covenant rights are exercised without discrimination on account of national origin. In particular, it urges the State party to allow non-nationals to enrol**

in its national social security system and benefit from welfare services, and ensure the universal birth registration of children, irrespective of the status of the parents. The Committee refers the State party to its statement dated 13 March 2017 on the duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights (E/C.12/2017/1).

Non-standard forms of employment

28. The Committee remains concerned at the prevalence of non-standard forms of employment, including long-term temporary employment, in spite of the adoption of measures, such as act No. 8074 of 2006 on the protection of fixed-term and part-time workers. Moreover, the Committee remains concerned that in order to minimize their labour costs and transfer accident risks, large companies resort to practices involving subcontracting, "dispatched labour" and the recruitment of individual contractors that deprive workers of the protection of labour rights (art. 7).

29. **The Committee recommends that the State party take effective measures to curb abuse of the forms of employment that do not fully protect workers' rights. In that regard, the Committee recommends that (a) the labour legislation cover all categories of workers, including those who are working under the regime of subcontracts or dispatched labour, or who are recruited as individual contractors; (b) legislative and regulatory measures be taken to fully implement Supreme Court ruling 2007 Doo 1729, outlawing unreasonable non-renewal of contracts, including deterrent penalties for contraveners; and (c) labour inspections effectively monitor abuse of non-regular forms of employment.**

Coverage of the labour and social security legislation

30. The Committee is concerned that sectors such as agriculture, fisheries and domestic work, where workers are exposed to unfair and unfavourable conditions of work, are excluded from the labour standards act and other legislation protecting the right to just and favourable conditions of work and the right to social security (arts. 7 and 9).

31. **The Committee urges the State party to expand coverage of the labour standards act and other laws protecting workers' right to just and favourable conditions of work and the right to social security to all sectors of the economy. Moreover, the Committee recommends that any distinct legislation applicable to specific sectors, such as agriculture, fisheries and domestic work, do not provide for a lower level of labour rights, but rather address the increased risk of infringement of workers' rights. The Committee refers the State party to paragraphs 47 (f) and (h) of its general comment No. 23 (2016) on the right to just and favourable conditions of work.**

Adequate remuneration

32. The Committee remains concerned that, in spite of the recent increase, the minimum wage remains inadequate to enable workers and their families to enjoy a decent living. The Committee is also concerned at the number of workers that are paid below the minimum wage (art. 7).

33. **The Committee reiterates its recommendation that the State party ensure that the minimum wage is at a level which would enable workers and their families to enjoy an adequate standard of living. It also recommends that the minimum wage be applicable in all sectors and enforced through labour inspections and dissuasive penalties.**

Gender wage gap

34. The Committee is concerned that the gender wage gap has not narrowed in spite of the measures taken by the State party (art. 7).

35. **The Committee recommends that the State party:**

(a) **Address the root causes of women's career interruptions and their overrepresentation in part-time employment, due to care responsibilities;**

(b) **Assess the effectiveness of measures taken, such as the sufficiency of the number of day-care services, the take-up of flexible work arrangements and paternity leave and the enforcement of quotas, and take remedial measures;**

(c) **Monitor the implementation of the provisions on equal pay for work of equal value of the equal employment act, including by conducting cross-sectoral job evaluations.**

Migrant workers

36. Noting the information provided by the State party that a number of migrant workers do manage to change employment, the Committee remains concerned that the conditions set in the employment permit system, restricting and subjecting employment change to the authorization of employers, render migrant workers vulnerable to exploitation. The Committee is further concerned at reports of the exploitation of migrant workers in agriculture and fisheries that in many cases amounts to forced labour (arts. 6 and 7).

37. **The Committee recommends that the State party abolish the restriction on the change of employment for migrant workers under the employment permit system. Furthermore, bearing in mind its recommendation on the coverage of the labour legislation, the Committee urges the State party to ensure that labour and social security rights are protected and respected in the fisheries and agricultural sectors, including by preventing the practice of passport confiscation, investigating reports of the exploitation, de facto detention and physical abuse of migrant workers, and bringing perpetrators to justice. The Committee encourages the State party to ratify the International Labour Organization (ILO) Forced Labour Convention 1930 (No. 29) and the Abolition of Forced Labour Convention 1957 (No. 105).**

Right to strike

38. The Committee is concerned about (a) the restrictive criteria for legal strikes, which effectively bar the exercise of the right to strike in the State party; (b) reports of reprisals against workers participating in industrial action, including the continued prosecution of workers through civil and criminal actions on account of "obstruction of business"; and (c) the broad definition of "essential services" in which workers are not allowed to strike (art. 8).

39. **The Committee recommends that the State party ease the conditions for conducting legal strikes and restrict the scope of the definition of essential services so as to ensure the effective exercise of the right to strike. It also recommends that the State party refrain from actions that lead to violations of the right to strike and conduct independent investigations on allegations of reprisals against workers participating in industrial action.**

Trade union rights

40. While noting the legislation allowing the plurality of trade unions, the Committee is concerned at reports that it has been used by companies to weaken the power of workers in collective bargaining. The Committee is also concerned at legal provisions, such as those on the membership of dismissed workers, which hamper the independent functioning of trade unions. Moreover, it is concerned that workers in non-regular forms of employment, which make up the majority of the labour force in the State party, are not authorized to form or join trade unions (art. 8).

41. **The Committee recommends that the State party ensure that the plurality of trade unions is not used by companies to weaken the power of workers in collective bargaining. The Committee also recommends that the State party make the necessary legislative amendments to guarantee the right of all persons to form and join trade unions freely and to prevent arbitrary interference in the functioning of trade unions.**

The Committee encourages the State party to ratify the ILO Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention 1949 (No. 98).

Right to social security

42. While noting the intention of the State party to gradually abolish the application of the family duty to provide support to its members as an eligibility criterion for some social allowances, the Committee is concerned that it currently prevents individuals and households in need from receiving some social security benefits. The Committee is also concerned that the amount of certain social allowances is inadequate (art. 9).

43. **The Committee urges the State party to abolish altogether the family duty to support its members as an eligibility criterion for social security benefits, so as to ensure that those in need actually enjoy their right to social security. It also recommends that the State party ensure that the amounts of benefits, especially under the national basic livelihood scheme, are adequate. The Committee refers the State party to its general comment No. 19 (2007) on the right to social security.**

National health insurance

44. While noting the plan of the State party to expand the coverage of national health insurance, the Committee is concerned that its restrictive coverage leads to a heavy financial burden on households through out-of-pocket medical expenses and expensive private insurance premiums (arts. 9 and 12).

45. **In the context of the highly privatized health system, the Committee urges the State party to ensure the adequacy of the coverage of national health insurance so that health care is affordable, especially for disadvantaged and marginalized groups. To that end, the Committee recommends that the system cover preventive and curative services for illnesses and medical conditions, including non-communicable diseases. It also urges the State party to ensure universal coverage by removing eligibility obstacles under national health insurance and the medical benefits scheme.**

Older persons

46. Noting that the welfare of its ageing population is a key priority of the State party, the Committee remains concerned at the prevalence of poverty among and the reports of abuse of older persons, including in care facilities (art. 10).

47. **The Committee recommends that the State party take measures to ensure that older persons live in dignity and in environments that are safe. In particular, it recommends that the State party:**

(a) **Ensure that the eligibility requirements under the national pension system are adequate and the amounts of benefits enable older persons to enjoy an adequate standard of living;**

(b) **Ensure that older persons are able to remain at home for as long as possible and promote community-based care;**

(c) **Identify and address the root causes of abuse;**

(d) **Prevent abuse, including by significantly improving the monitoring of care facilities and strengthening the reporting system of elderly abuse.**

Child abuse

48. The Committee is concerned at the increasing number of cases of child abuse in the family in the State party, especially in a context of still inadequate reporting and victim protection systems (art. 10).

49. **The Committee recommends that the State party:**

(a) **Ensure that professionals who are in contact with children are designated as mandatory reporters and consider introducing a duty to report for any individual who suspects child abuse;**

(b) **Ensure that legal provisions and infrastructure are in place to ensure that children victims of abuse are separated from abusers;**

(c) **Promote family-type alternative care for children who are victims of abuse.**

Right to water

50. The Committee is concerned at reports of contamination of the State party's rivers and the negative impact on the availability of safe drinking water (art. 11).

51. **The Committee recommends that the State party strengthen efforts to ensure the quality of water sources and the availability of safe potable drinking water for all. The Committee draws the attention of the State party to its general comment No. 15 (2002) on the right to water.**

Housing

52. The Committee is concerned that the State party's housing policy does not provide for long-term solutions against homelessness. It is also concerned at (a) the large number of individuals and households housed in inadequate dwellings; (b) the high housing costs, including due to housing shortages; and (c) the lack of adequate protection of tenants against forced evictions (art. 11).

53. **The Committee urges the State party to elaborate housing policies that:**

(a) **Address the root causes of homelessness and pursue long-term solutions for homeless individuals;**

(b) **Increase the availability of adequate and affordable housing, including social housing;**

(c) **Put into place mechanisms to regulate rising housing costs in the private sector, including unreasonable housing costs, and provide for the renewal of rental contracts to encourage longer-term security of tenure for tenants;**

(d) **Ensure that legislation provides all groups with adequate protection against eviction, including the right to be consulted, proper procedural safeguards and access to suitable alternative housing or adequate compensation.**

54. **The Committee draws the attention of the State party to its general comment No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions.**

Suicide

55. While noting the implementation of successive plans to address the high level of suicide in the State party and the system of gatekeepers that has been introduced, the Committee regrets the lack of information about measures taken to tackle the societal root causes of the still high rate of suicide in the State party.

56. **The Committee recommends that the State party strengthen efforts to prevent suicide, including by addressing its societal root causes, including undue stress in education and employment, poverty among older persons and discrimination and hate speech experienced by certain groups, such as lesbian, gay, bisexual, transgender and intersex persons.**

Mental health

57. The Committee is concerned at the very low percentage of persons with mental illnesses that have had access to mental health services in the State party (art. 12).

58. **The Committee recommends that the State party expand the availability and accessibility of mental health services, in particular by promoting community-based care and allocating a larger percentage of the health budget to mental health-care services.**

Right to sexual and reproductive health

59. The Committee is concerned about the criminalization of abortion in the State party (art. 12).

60. **The Committee urges the State party to decriminalize women undergoing abortion so as to guarantee women's right to sexual and reproductive health and the protection of their dignity, and ensure that sexual and reproductive health services are made available and accessible to all. The Committee refers the State party to its general comment No. 22 (2016) on the right to sexual and reproductive health.**

Health care for persons with HIV/AIDS

61. The Committee is concerned at reports of medical personnel refusing medical care to persons with HIV/AIDS (art. 12).

62. **The Committee urges the State party to ensure that persons with HIV/AIDS enjoy their right to health, by accessing and receiving care without discrimination. The Committee draws the attention of the State party to paragraphs 18 and 19, relating to non-discrimination and equal treatment, of its general comment No. 14 (2000) on the right to the highest attainable standard of health.**

Equal access to quality education

63. The Committee is concerned that in spite of the measures taken by the State party, the frequent recourse to night-time courses and extracurricular activities, which disadvantaged and marginalized households cannot afford, limits equal access to education, including to higher education, and deepens inequalities. The Committee is also concerned about the discriminatory impact of the system on individuals' access to employment (arts. 13 and 14).

64. **The Committee recommends that the State party take effective measures to ensure equal access to affordable and quality education, taking into account the special needs of disadvantaged and marginalized individuals. In particular, it recommends that the State party:**

(a) **Limit the need to resort to night-time courses and extracurricular activities by ensuring the quality and delivery of school curricula;**

(b) **Revise the secondary and tertiary education entrance systems to ensure equal access for all on the basis of capacity;**

(c) **Monitor the impact of the regulatory measures taken to reduce recourse to night-time courses and extracurricular activities;**

(d) **Pursue the egalitarian function of education, including with a view to promoting equality of opportunity and treatment in employment.**

Cultural diversity

65. The Committee is concerned about the low level of acceptance of multiculturalism among the State party's population. While noting the measures taken to facilitate the social integration of non-nationals in the State party, the Committee is concerned at the lack of policies promoting cultural diversity that reach out to the population at large (art. 15).

66. **The Committee recommends that the State party:**

(a) **Promote the value of cultural diversity among its population, including by countering prejudices against non-nationals;**

(b) **Monitor the impact of measures taken on the extent to which cultural diversity is embraced.**

67. **The Committee refers the State party to its general comment No. 21 (2009) on the right of everyone to take part in cultural life.**

D. Other recommendations

68. **The Committee encourages the State party to provide additional and more detailed information in its next periodic report with respect to the measures in place to ensure the right of everyone to benefit from scientific progress and its practical application, in line with article 15, paragraph 1 (b), of the Covenant.**

69. **The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

70. **The Committee recommends that the State party consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.**

71. **The Committee recommends that the State party take fully into account its obligations under the Covenant and ensure the full enjoyment of the rights enshrined therein in the implementation of the 2030 Agenda for Sustainable Development at the national level. Achievement of the Sustainable Development Goals would be significantly facilitated by the State party establishing independent mechanisms to monitor progress and treating beneficiaries of public programmes as rights holders who can claim entitlements. Implementing the Goals on the basis of the principles of non-discrimination, participation and accountability would ensure that no one is left behind.**

72. **The Committee recommends that the State party take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights, in order to facilitate the assessment of progress achieved by the State party in complying with its obligations under the Covenant for various segments of the population. In that context, the Committee refers the State party to, inter alia, the conceptual and methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (HRI/MC/2008/3).**

73. **The Committee requests that the State party disseminate the present concluding observations widely at all levels of society, particularly among parliamentarians, public officials and judicial authorities, and that it inform the Committee in its next periodic report about the steps taken to implement them. The Committee encourages the State party to engage with the National Human Rights Commission of Korea, non-governmental organizations and other members of civil society in the follow-up to the present concluding observations and in the process of consultation at the national level prior to the submission of its next periodic report.**

74. **In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 18 months of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 18 (a) (business and human rights), 23 (non-discrimination legislation) and 41 (trade union rights) above.**

75. **The Committee requests the State party to submit its fifth periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 October 2022. In addition, it invites the State party to update its common core document, as necessary, in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. I).**